IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

Bail Appl..No. 4647 of 2007()

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AGAINST THE ORDER IN CRLP 79/2005 IN CC.367/2002 of J.M.F.C.,OTTAPPALAM

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PETITIONER/ACCUSED.

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K.B.RAMESH,S/O. BALAN,THAZHETHEPURACKEL
KADAMBUR,AMBALAPARA, OTTAPALAM,PALAKKAD,
NOW RESIDING "KARUNAALAYAM", EAST YAKKARA,
PALAKKAD.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS: COMPLAINANT

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STATE OF KERALA, REP.BY
SUB INSPECTOR OF POLICE, OTTAPALAM,
POLICE STATION,,OTTAPALAM.
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**B.A.No.4647 of 2007**

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Dated this the 1st day of August, 2007

**ORDER**

Application for anticipatory bail. The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Section 452 I.P.C. Investigation is complete. Final report has already been filed. The petitioner could not appear before the learned Magistrate . The learned Magistrate has issued coercive processes against the petitioner. The petitioner apprehends imminent arrest. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. In these circumstances, appropriate directions may be issued under section 438 Cr.P.C and/or 482 Cr.P.C, prays the learned counsel for the petitioner. There is a further statement that the parties have settled their disputes.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

**(R.BASANT, JUDGE)**

sj

/True copy/

P.A.to Judge